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Boc,
Tillinghast
& Bolduc, P.A.
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*Michael J. Bolduc
**Thomas G. Ferrini
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*Christopher A.Wyskiel
*Laurie Smith Young

William E. Boc - Retired

* also admitted in Maine **also admitted in MA & VT ***also admitted in MA, ME & VI

August 31, 2022

By e-mail and U.S. Mail: vprice@barrington.nh.gov

Barrington Planning Board c/o Vanessa Price, Town Planner Town of Barrington, NH 333 Calef Highway P. O. Box 660 Barrington, NH 03825

RE: 239-1.1-TC-21-2SUB (Owners: David & Glenda Henderson) Request by applicant for a 2-Lot subdivision Lot 1.1 would be 11.81 and Lot 1.2 would be 17.19 acres (Map 239, Lot 1.1) located off Franklin Pierce Highway in the Town Center (TC) Zoning District

Dear Ms. Price and Members of the Barrington Planning Board:

This firm represents Garvey & Co., Ltd. and its principal, David Garvey, who were authorized by property owners David and Glenda Henderson to file and follow through on the above-referenced application. Garvey's authority to do so is by signed authorization filed with the original Planning Board application and by contract between the parties (not submitted to the Planning Board).

A copy of this e-mail is sent to Mr. Garvey, who, by "reply all" response, will confirm my representation and concurrence with the following.

By Notice of Extension dated July 21, 2022 (copy attached), the Barrington Planning Board granted a one-year extension to meet precedent conditions of the Planning Board's conditional subdivision approval. At the suggestion of the Town, Mr. Garvey requested the extension, even though the Planning Board's conditional approval was appealed by abutter Candice K. Harvey to the NH Superior Court (the Court upheld the Town of Barrington's conditional approval) and then to the NH Supreme Court (Candice K. Harvey v. Town of Barrington, NH Supreme Court Docket No. 2021-0601, still pending). The appeal stays all local action on the conditional subdivision approval as a matter of State law. See, RSA 677:15, II (copy attached, with copy of Superior Court Certiorari Order ordering the stay of all proceedings upon the decision appealed from). Your Town counsel, Attorney Laura Spector-Morgan, is aware of the NH Supreme Court appeal and has been copied on all appeal filings.

Barrington Planning Board August 31, 2022 Page 2

At its August 2, 2022 meeting, the Planning Board, contrary to the Superior Court ordered and statutory stay, conducted further proceedings on the above-titled matter. By the Planning Board's August 4, 2022 letter (copy attached) to property owners and Garvey & Co., Ltd., Town Planner Vanessa Price informed the addressees of the Planning Board's vote to revoke the conditional subdivision approval pursuant to RSA 676:4-a, I (a). That notice instructed any party receiving the August 4 letter to request a hearing within 30 days for the Planning Board to consider anything relevant prior to its revocation order becoming final.

Garvey & Co., Ltd. and its principal, David Garvey, never received notice of the Planning Board's August 2, 2022 hearing. Mr. Garvey only received a copy of the Planning Board's August 4, 2022 letter referenced above when Town Planner Vanessa Price e-mailed a copy of it to the undersigned (see August 11 and August 16, 2022 e-mail copies attached).

A hearing is requested before the Planning Board's revocation order becomes final. Please advise me and Mr. Garvey at his correct mailing address:

Garvey & Co., Ltd. and David Garvey P. O. Box 935 Durham, NH 03824 (NH . . . not NC)

The attached 4-page copy of e-mail exchanges between me and Town Planner Vanessa Price dated August 11 and August 16, 2022 summarize other facts relevant to the Garvey hearing request. It references Town records sent by Vanessa Price to me, including evidence that notice of the August revocation hearing was never properly sent to Mr. Garvey.

As the Planning Board's revocation order has not yet become final, upon receipt of this letter and at the Planning Board's next convenient meeting, we specifically ask:

1. The Planning Board acknowledge the Court-ordered and statutory stay of all local proceedings in the above-captioned matter and, as such, void its August 2, 2022 revocation vote and August 4, 2022 letter regarding same.

Thereafter, the Planning Board should take no further action until the State of NH Supreme Court's captioned <u>Candice K. Harvey v. Town of Barrington</u>, Case Number 2021-0601, has been ruled upon. Only then should a hearing be held for the Planning Board to consider.

2. The (Planning Board) lack of jurisdiction to conduct any hearing until proper notice is sent to Garvey & Co., Ltd. and David Garvey. See, <u>Hussey v. Barrington</u>, 135 N.H. 227 (1992).

Barrington Planning Board August 31, 2022 Page 3

- 3. The applicant (property owners and agent Garvey) continue to have time to fulfill conditions precedent of the original conditional subdivision approval. The original period of time within which precedent conditions were to be fulfilled was stayed upon the Superior Court's July 1, 2021 Order. The number of days from the Superior Court's July 1, 2021 Order through the originally established deadline to fulfill precedent conditions should be counted from the time the stay ends to a new precedent conditions fulfillment deadline. It would be appropriate then to consider an extension to that deadline, given factual circumstances otherwise placed on hold because of the stay.
- 4. For the reasons summarized in the undersigned's August 11 and 16, 2021 e-mail exchange with Town Planner Vanessa Price, the Hendersons had no right to unilaterally withdraw Garvey & Co., Ltd.'s and David Garvey's agency status. To do so breaches their contract. The Planning Board should at any hearing consider these additional facts and not act unilaterally on inaccurate statements of the property owners alone before making any ruling that substantially jeopardizes the parties' rights and obligations, especially without giving proper notice to Mr. Garvey.

I'm providing a copy of this hearing request to your legal counsel, Attorney Laura Spector-Morgan.

Sincerely.

Christopher A. Wyskiel

CAW/nl Enclosures

cc: Laura Spector-Morgan, Esquire (by e-mail only)
David Garvey (by e-mail only)
David and Glenda Henderson (by U.S. Mail)



Planning & Land Use Department
Town of Barrington
PO Box 660
333 Calef Highway
Barrington, NH 03825
603.664.0195
VPrice@barrington.nh.gov

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NOTICE OF EXTENSION

July 21, 2022

David & Glenda Henderson 1273 Winged Foot Lane Denver, NC 28037

Garvey & Co Ltd. David Garvey PO Box 935 Durham, NC 03824

Atlas Survey C. LLC Adam Fogg 25 Nute Rd. Dover, 03824

RE: 239-1.1-TC-21-2Sub (Owners: David & Glenda Henderson) Request by applicant for a 2-Lot subdivision Lot 1.1 would be 11.81 and Lot 1.2 would be 17.19 acres (Map 239, Lot 1.1) located off Franklin Pierce Highway in the Town Center (TC) Zoning District.

Dear applicant:

This is to inform you that the Barrington Planning Board at its July 19, 2022, meeting **GRANTED** a one-year extension for the application to meet precedent conditions for the application referenced above. The new extension date is July 19, 2023.

If you have any questions or concerns, please don't hesitate to contact me. I can be reached via email at VPrice@barrington.nh.gov or phone at 603-664-0195.

Sincerely,

Vanessa Price

Vanessa Price Town Planner

Cc: File

333 Calef Highway • PO Box 660 • Barrington, New Hampshire 03825 • Phone: (603) 664-5798• www.barrington.nh.gov • planning@barrington.nh.gov

TITLE LXIV PLANNING AND ZONING

As sent to ? Vanessa Paire 8/16/2022

CHAPTER 677 REHEARING AND APPEAL PROCEDURE

Appeal and Court Review of Planning Board Decisions

Section 677:15

677:15 Court Review. -

I. Any persons aggrieved by any decision of the planning board concerning a plat or subdivision may present to the superior court a petition, duly verified, setting forth that such decision is illegal or unreasonable in whole or in part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within 30 days after the date upon which the board voted to approve or disapprove the application; provided however, that if the petitioner shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the petitioner shall have the right to amend the petition within 30 days after the date on which the written decision was actually filed. This paragraph shall not apply to planning board decisions appealable to the board of adjustment pursuant to RSA 676:5, III. The 30-day time period shall be counted in calendar days beginning with the date following the date upon which the planning board voted to approve or disapprove the application, in accordance with RSA 21:35.

I-a. (a) If an aggrieved party desires to appeal a decision of the planning board, and if any of the matters to be appealed are appealable to the board of adjustment under RSA 676:5, III, such matters shall be appealed to the board of adjustment before any appeal is taken to the superior court under this section. If any party appeals any part of the planning board's decision to the superior court before all matters appealed to the board of adjustment have been resolved, the court shall stay the appeal until resolution of such matters. After the final resolution of all such matters appealed to the board of adjustment, any aggrieved party may appeal to the superior court, by petition, any or all matters concerning the subdivision or site plan decided by the planning board or the board of adjustment. The petition shall be presented to the superior court within 30 days after the board of adjustment's denial of a motion for rehearing under RSA 677:3, subject to the provisions of paragraph I.

(b) If, upon an appeal to the superior court under this section, the court determines, on its own motion within 30 days after delivery of proof of service of process upon the defendants, or on motion of any party made within the same period, that any matters contained in the appeal should have been appealed to the board of adjustment under RSA 676:5, III, the court shall issue an order to that effect, and shall stay proceedings on any remaining matters until final resolution of all matters before the board of adjustment. Upon such a determination by the superior court, the party who brought the appeal shall have 30 days to present such matters to the board of adjustment under RSA 676:5, III. Except as provided in this paragraph, no matter contained in the appeal shall be dismissed on the basis that it should have been appealed to the board of adjustment under RSA 676:5, III. Upon presentation of such petition, the court may allow a certification order directed to the planning board to

II. Upon presentation of such petition, the court may allow a certiorari order directed to the planning board to review such decision and shall prescribe therein the time within which return thereto shall be made and served upon the petitioner's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the order shall stay proceedings upon the decision appealed from. The planning board shall not be required to return the original papers acted upon by it; but it shall be sufficient to return certified or sworn copies thereof, or of such portions thereof as may be called for by such order. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

III. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the

THE STATE OF NEW HAMPSHIRE JUDICIAL BRANCH

SUPERIOR COURT

Strafford Superior Court 259 County Farm Road, Suite 301 Dover NH 03820

Telephone: 1-855-212-1234 TTY/TDD Relay: (800) 735-2964 http://www.courts.state.nh.us

CERTIORARI ORDER

Case Name:

Candice K Harvey v Town of Barrington

Case Number:

219-2021-CV-00202

Date Action Filed: June 30, 2021

The Court has reviewed the Petition for Writ of Certiorari and makes the following order:

- 1. A Writ of Certiorari shall issue
- 2. Proceedings upon the decision appealed from are stayed.
- 3. The Planning Board shall deliver certified or sworn copies of all papers acted on by the Board to the Superior Court Clerk at Strafford Superior Court.

So Ordered.

July 1, 2021

Date

Presiding Justice

Honorable Mark E. Howard

Clerk's Notice of Decision Document Sent to Parties on 07/01/2021



Planning & Land Use Department
Town of Barrington
PO Box 660
333 Calef Highway
Barrington, NH 03825
603.664.0195
VPrice@barrington.nh.gov

August 4, 2022

David & Glenda Henderson 1273 Winged Foot Lane Denver, NC 28037

Garvey & Co Ltd. David Garvey PO Box 935 Durham, NC 03824

Atlas Survey C. LLC Adam Fogg 25 Nute Rd. Dover, 03824

RE: 239-1.1-TC-21-2Sub (Owners: David & Glenda Henderson) Request by applicant for a 2-Lot subdivision Lot 1.1 would be 11.81 and Lot 1.2 would be 17.19 acres (Map 239, Lot 1.1) located off Franklin Pierce Highway in the Town Center (TC) Zoning District.

Dear Mr. and Mrs. Henderson:

Pursuant to RSA 676:4-a, I(a), the Barrington Planning Board has revoked the conditional approval of a subdivision of property located off Franklin Pierce Highway (Map 239, Lot 1), owned by David and Glenda Henderson, which conditional approval was granted on June 7, 2021, as well as the one-year extension of that approval, which was granted by the board on July 19, 2022.

Any party receiving this notice may request a hearing within 30 days, in which case a hearing with notice will be held prior to the revocation becoming final.

This revocation may be appealed pursuant to RSA 677:15.

If you have any questions or concerns, please don't hesitate to contact me. I can be reached via email at <u>VPrice@barrington.nh.gov</u> or phone at 603-664-0195.

Sincerely,

Vanessa Prica

Vanessa Price, Town Planner

Cc: File

333 Calef Highway • PO Box 660 • Barrington, New Hampshire 03825 • Phone: (603) 664-5798• www.barrington.nh.gov • planning@barrington.nh.gov

Christopher A. Wyskiel

CAN & Town 8/16

From:

Christopher A. Wyskiel

Sent:

Tuesday, August 16, 2022 11:10 AM

To:

'Vanessa Price'

Cc:

Laura Spector-Morgan; Conner MacIver

Subject:

RE: Henderson sub-division matter revocation: 239-1.1-TC-21-2Sub

Attachments:

local proceedings STAYED.pdf

Vanessa:

Thanks for your e-mail and attachments. I'm cc'ing Atty Spector-Morgan since you cc'd her by your e-mail to me. I intend to call Laura also, if she will talk to me about this matter. As a preface, I share the following.

The Planning Board had/has no legal authority to act on the application as all local proceedings were/are STAYED (see attached). Dave Garvey explains that he told the Planning Board this when he appeared before the Board in July when the Bd granted an extension to its deadline to satisfy local Conditions Precedent. No real harm in that act (extension); why fight a battle w/ Town Hall re: STAY when no harm done by its extension. But the Board's revocation order clearly violates the statutory and Court ordered STAY to Garvey's detriment as applicant and is illegal.

Garvey (with my help) would have made the point more strongly and straightened out things locally IF he had rec'v'd notice. He rec'v'd no notice. I inquired of this last Thursday. You confirmed that the notice the Town sent was returned to sender. You sent me a photo of the (returned to Town) unopened envelope mailed to Garvey. It was inaccurately addressed to him in Durham NC, not Durham NH. So the PI Bd's hearing/action is also void for failing to send RSA required notice.

Finally, Garvey's P&S with the Hendersons conditions Buyer performance upon getting all approvals for sub-division and exhaustion of all related appeals (or passing of appeal periods). Abutter Candice Harvey appealed the Planning Board's Conditional Sub-Division approval to the Superior Court (see attached). Dave Garvey was allowed to intervene (with me as legal counsel) in that appeal. The Superior Court affirmed the PI Bd's action. Harvey appealed that Superior Court Order to the NH Supreme Court. Attorney Dan Hartley (for Harvey) and I (for Garvey) have filed briefs with the NH Supreme Court per the Court's briefing order. As an electronic service recipient in both court appeals, Atty Spector-Morgan is aware of this procedural posture of the conditionally approved sub-division application. The Court has not yet scheduled oral arguments or otherwise ruled on the appeal. The appeal is not exhausted. The STAY remains in effect.

Contractually, the Hendersons cannot unilaterally revoke Garvey's agency to obtain P&S delineated approvals and exhaust all appeals. The P&S states: "The closing shall occur 60 days subsequent to the final approvals and passing of all appeal periods." The P&S further states/requires: "Buyer will use due diligence to pursue approvals." The appeals have certainly required Garvey to do that. And as he does (fulfilling his contractual obligations), the Barrington PI Bd cannot violate the statutory and Court Ordered STAY.

Chris Wyskiel

Christopher A. Wyskiel
Wyskiel, Boc, Tillinghast & Bolduc, P.A.
561 Central Avenue
Dover, NH 03820 *
Tel. (603) 742-5222; Fax (603) 742-7212

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From: Vanessa Price < VPrice@barrington.nh.gov>

Sent: Tuesday, August 16, 2022 10:26 AM

To: Christopher A. Wyskiel < cwyskiel@wbtblaw.com>

Cc: Laura Spector-Morgan < laura@mitchellmunigroup.com>; Conner MacIver < cmaciver@barrington.nh.gov>

Subject: Henderson sub-division matter revocation: 239-1.1-TC-21-2Sub

Mr. Wyskiel,

Good morning.

Please see the attached requested information. There is no correspondence with our Town Attorney, Laura Spector-Morgan included in this request.

- 1. Notices sent and list of names/addresses to whom sent re: August 2 Pl Bd meeting at which extension was revoked
- 2. Draft of meeting minutes (Will be approved at the September 6, 2022 meeting) of meeting/Bd action
- 3. Formal Notice of Decision of extension revocations and list of names/addresses to whom sent

Please let me know if you have any additional questions or concerns.

Best Regards,

Vanessa Price Town Planner Town of Barrington, NH 333 Calef Highway, P.O. Box 660 Barrington, NH 03825 (603) 664-0195

From: Christopher A. Wyskiel < cwyskiel@wbtblaw.com>

Sent: Thursday, August 11, 2022 4:09 PM

To: Vanessa Price < VPrice@barrington.nh.gov>

Cc: Laura Spector-Morgan < laura@mitchellmunigroup.com >; Conner MacIver < cmaciver@barrington.nh.gov >

Subject: RE: Henderson sub-division matter revocation

[EXTERNAL]

Vanessa:

Thank you. I look forward to rec'v'ing copies. I expect to speak to Atty Spetor-Morgan (upon review of what you send) who cc'd in your e-mail to me (as I do here).

The envelope you sent a copy of was addressed to Mr. Garvey in Durham NC (North Carolina) not NH. It is post-marked &/28. I presume it sent the July 27 letter you sent to the Hendersons (a copy of which Atty Hartley provided to me ... which I first saw last evening), which was also addressed to Mr. Garvey in Durham NH (not NH).

Per our phone conversation, here are my contacts. Please e-mail to me:

- Notices sent and list of names/addresses to whom sent re: August 2 PI Bd meeting at which extension was revoked
- 2. Minutes (draft and final when approved) of meeting/Bd action
- 3. Formal Notice of Decision of extension revocations and list of names/addresses to whom sent

I'd appreciate your sending the above as soon as you can (so I can speak to Atty Spector-Morgan about this). By separate e-mail (if easier, if you need a little time), please also send copies of any letters, e-mails, notes form phone calls, etc. relating to above, from/to town, Henderson(s) and legal counsel (to the extent the latter is not privileged).

As I explained, I represent David Garvey and his Garvey & Co Ltd. entity which has a contract right to purchase the Henderson property and seek sub-div approval for it (as done) and exhaust all appeals relating to approval obtained. The Hendersons' abutter, Candice K. Harvey, appealed the Pi Bd's sub-div approval to the NH Superior Court. With Court approval, my client intervened with my representation. The Superior Court upheld he Pi Bd's approval. Ms. Harvey appealed that order to the NH Supreme Court. I continue to represent Mr. Garvey and his entity in that appeal. Briefs have been submitted by both sides. The Supreme Court has not yet scheduled oral arguments, nor otherwise ruled. Appeals are thus not yet exhausted.

My client still has every contractual right to exhaust appeals. That right includes keeping the underlying PI Bd matter (stayed by appeal litigation) alive as applicant/agent for the property owners (Henderson) and in his own right as Applicant with valid contract rights. Because the appeals stayed the PI Bd's and other town actions on the sub-div approval (as a matter of NH Law), I didn't see the need for any foram PI Bd extension granted in July, but (as you characterized) since it appeared a formality, Mr. Garvey requested it and the 1 year extension was granted as the NH Supreme Court appeal plays out.

Mr. Garvey, as Applicant, was given no notice of the PI Bd August 2 meeting at which the extension was revoked (per your phone explanation ... I've not yet seen records requested above). He deserved notice. Had he been given notice, all of the above could have been explained to the PI Bd.

Now there is a mess to sort out. I trust I can be sent the records requested without a formal RSA 91-A request.

Chris Wyskiel

Christopher A. Wyskiel Wyskiel, Boc, Tillinghast & Bolduc, P.A. 561 Central Avenue Dover, NH 03820 Tel. (603) 742-7212; Fax (603) 742-7212

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TOWN OF BARRINGTON CONFIDENTIALITY AND DISCLOSURE NOTICE:

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Vanessa Price

From:

Barbara Irvine

Sent:

Monday, August 15, 2022 1:55 PM

To:

Vanessa Price

Subject:

Henderson Subdivision (Dave Garvey)

Attachments:

MX-3050N_20220815_132016.pdf

Vanessa

Attached is a copy of the list certified mailed along with the notice that was sent. The names a 3 of each name because they are the labels.

Barbara Irvine
Planning & Land Use Administrative Assistant
Town of Barrington
PO Box 660
333 Calef Highway
Barrington, NH 03825
603.664.0182

NEW EMAIL: birvine@barrington.nh.gov

TOWN OF BARRINGTON CONFIDENTIALITY AND DISCLOSURE NOTICE:

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BARRINGTON PLANNING BOARD PUBLIC NOTICE

Land Use Department Barrington Town Hall PO Box 660 333 Calef Highway Barrington, NH 03825

Pursuant to RSA 676:4-a, I(a), the Barrington Planning Board has revoked the conditional approval of a subdivision of property located off Franklin Pierce Highway (Map 239, Lot 1), owned by David and Glenda Henderson, which conditional approval was granted on June 7, 2021, as well as the one-year extension of that approval, which was granted by the board on July 19, 2022. Any party receiving this notice may request a hearing within 30 days from August 2, 2022, in which case a hearing with notice will be held prior to the revocation becoming final.

To request a hearing, or with any questions, please contact the Land Use department via phone at (603) 664-5798 or email at <u>planning@barrington.nh.gov</u>. Files on the application and item above, including the full text of any proposed ordinances, regulations, or other initiatives are available for inspection in the Land Use Department Office, Monday through Thursday from 8:00 a.m. to 3:00 p.m. or on the Town's website.

239-1.1 Lemos, Maria & Mark Tr 1164 Ocean Blvd Rye, NH 03870

239-1.1 Edward Lemos 1995 Trust Broadview Farm 138 Oak Hill Road Barrington, NH 03825

239-1.1 Slot, Donald R 88 Oak Hill Road Barrington, NH 03825

239-1.1 Mixon, Howard & Phyllis 82 Oak Hill Road Barrington, NH 03825

239-1.1 Kay, Edward 21 Littleworth Road Dover, NH 03820

239-1.1 Harvey Candace K PO Box 452 Barrington, NH 03825

239-1.1 1962 Real Estate LLC 132 Brock Street Rochester, NH 03867

239-1.1 Dove Development Group, ILC 242 Central Avenue Dover, NH 03820

239-1.1 Town of Barrington POB 660 Barrington, NH 03825

239-1.1 Leone Joshua-Zelle, Mary 654 Franklin Pierce Highway Barrington, NH 03825 239-1.1 Lemos, Maria & Mark Tr 1164 Ocean Blvd Rye, NH 03870

239-1.1 Edward Lemos 1995 Trust Broadview Farm 138 Oak Hill Road Barrington, NH 03825

239-1.1 Slot, Donald R 88 Oak Hill Road Barrington, NH 03825

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239-1.1 Garvey & Company LTD PO Box 935 Durham, NH 03824

239-1.1 Marc Jacobs Soil Scientist Cert PO Box 417 Greenland, NH 03840-0417

239-1.1 Adam Fogg LLS Atlantic Survey 25 Nute Road Dover, NH 03820

239-1.1 David Vincent LLS PO Box 1622 Dover, NH 03821-1622 239-1.1
David & Glenda Henderson
1273 Winged Foot Lane
Denver, NC 28037

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